STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NOS. 2017-370-E, 2017-207-E, and 2017-305-E

Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920	MOTION TO BIFURCATE OR, IN THE ALTERNATIVE, TO SEQUENCE THE HEARING

The South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") hereby move the Commission pursuant to R. 103-829 to bifurcate the above-captioned consolidated dockets. SCE&G's decision to abandon construction of V.C. Summer Units 2 and 3 is the single most important issue shaping the energy landscape in South Carolina today. Yet SCE&G and Dominion's current application asks the Commission to skip over that issue and blindly accept the utilities' own estimates of how much they can charge customers over the next several decades for a project that will never generate a single kilowatt-hour of electricity.

To best protect South Carolinians, it would be a far better use of judicial resources for the Commission to receive testimony, hold a hearing, and issue an order regarding the prudency of abandonment and how much SCE&G customers must pay in future decades for the V.C. Summer Units 2 & 3 before receiving testimony, holding a hearing, and issuing an order regarding the proposed business combination of SCANA Corporation and Dominion Energy, Inc. ("Dominion") (together, the "Companies") and the associated customer benefits plan or alternative proposals for how to burden customers with the nuclear project costs. In the alternative, CCL and SACE move the Commission to sequence the hearing in the above-captioned consolidated dockets so that the issues surrounding the V.C Summer abandonment are addressed first—with each party able to present its witness and conduct cross examination and redirect on these discrete issues—and the issues surrounding the proposed merger are addressed second. In support of this motion, CCL and SACE state as follows:

1. This matter arises out of consolidated dockets 2017-370-E, 2017-207-E, and 2017-305-E, which, collectively, address the prudency of South Carolina Electric & Gas Company's ("SCE&G") abandonment of the V.C. Summer Units 2 & 3 project, approval of a proposed business combination between SCANA Corporation and Dominion, and approval of a cost recovery and benefits plan.

2. A central issue in this matter is the question of rate relief for SCE&G customers, whose rates have been driven up significantly by the costs of the failed V.C. Summer Units. In their Joint Application and Petition, the Companies present three alternative cost recovery proposals for Commission approval—the Merger Customer Benefits Plan, No Customer Benefits Plan, and Base Request. Each of these cost

recovery proposals provides some measure of ratepayer relief from SCE&G's calculations of the total costs it claims to be entitled to recover under the Base Load Review Act's abandonment provision. S.C. Code Ann. § 58-33-280(K). Exhibit 13 of the Application contains those calculations.

3. As proposed in the Application submitted by SCE&G and Dominion, each of the three cost recovery proposals requires approval of new electric rate schedules under S.C. Code Ann. § 58-27-870(F). Application at 12-13. And the rates to be set under each option are predicated on an abandonment determination under S.C. Code Ann. § 58-33-280(K).[1] *Id.* SCE&G and Dominion have structured their Application in a way that would force the Commission to approve the cost schedule exactly as SCE&G has proposed—with the timeline and cost outlays presented in Exhibit 13—in order to unlock the customer benefits outlined in the merger application.

4. Specifically, SCE&G and Dominion request that the Commission issue an order under S.C. Code Ann. § 58-33-280(K) approving Exhibit 13's cost schedule for the V.C. Summer Units 2 & 3 project. Commission approval of that cost schedule is required so that the Company can amortize and recover those costs through rates.[2] Exhibit 13

[1] The Merger Customer Benefits Plan also involves approval of the merger under S.C. Code § 58-27-1300 or other applicable South Carolina law. The No Customer Benefits Plan, and Base Request also involve approval of cost schedules for the V.C. Summer project under S.C. Code Ann.§ 58-33-270(E).

[2] S.C. Code Ann. § 58-33-280(K) provides that "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent." In addition, capital costs and SCE&G's cost of capital associated with them may be disallowed if SCE&G failed "to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs," and that failure was "imprudent considering the information available at the time

presents the gross amount of the Capital Costs incurred for the project through December 31, 2017 as approximately $4.7 billion net of transmission project costs. Application at 48.

5. Each of the three cost recovery proposals—the Customer Benefits Plan, the No Merger Benefits Plan, and the Base Request—requires approval of the cost schedule set out in Exhibit 13.

6. SCE&G and Dominion have structured their Application so that if the Commission declares that certain costs associated with the V.C. Summer project were not prudently incurred, the $1,000 "refunds," charitable giving, and other benefits offered in the Dominion merger package will not materialize. By doing so, the Companies are holding customer rate relief and other benefits hostage to the abandonment decision, putting undue pressure on the Commission to sign-off on SCE&G's abandonment cost calculations without thorough, independent review.

7. Contrary to SCE&G and Dominion's position, the most efficient way to structure the consolidated proceeding is to untangle the two major matters at the heart of the Application and Petition. This achieves judicial economy and also will produce a cleaner record on the distinct pieces of the application.

8. First, the Commission should hear evidence on SCE&G's decision to abandon construction of V.C. Summer Units 2 and 3—specifically the timing of that decision and the appropriate costs recoverable pursuant to that decision. The abandonment determination will be highly litigated in this consolidated proceeding. The Commission has never conducted a proceeding under S.C. Code Ann. § 58-33-280(K),

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that [SCE&G] could have acted to avoid or minimize the costs." S.C. Code Ann. § 58-33-280(K).

and the parties will offer testimony that covers years of actions by SCE&G, its partners, and its contractors and subcontractors. Those actions are the subject of multiple state and federal investigations and resulted in the outlay of billions of dollars for a now-abandoned project.

9. There is absolutely no reason the Commission should accept SCE&G's cost calculations without engaging in a careful review. In fact, as recently as July 30, 2018, evidence came to light that questions the integrity of certain evidence this Commission relied on in the past to approve increases under the Base Load Review Act. "[A]ccording to [former SCE&G accountant Carlette Walker's deposition] testimony, her team's financial numbers [regarding the nuclear project's viability] were later altered as the company prepared for its hearing in front of the utility commission."[3] The Company's actions in seeking cost increase under the Base Load Review Act certainly will impact the Commission's decision on abandonment costs. At this time, CCL and SACE make no independent allegation regarding the Company's conduct prior to abandonment. But, as the article makes clear, litigation regarding whether the Company acted prudently will be heavily contested in the coming months.

10. In addition, 2018 South Carolina Laws Act 258 (H.B. 4375) (codified as amended in scattered sections of S.C. Code Ann. Chapter 33 Title 58), which became law on June 28, 2018, clarifies that the Base Load Review Act requires a careful review of the conduct of multiple people and entities; the timing of key decisions; and the potential

[3] Andrew Brown and Thad Moore, *Former SC nuclear project accountant says regulators received altered cost estimates from utility* , The Post & Courier (Jul. 30, 2018), https://www.postandcourier.com/business/former-sc-nuclear-project-accountant-says-regulators-received-altered-cost/article_66d8c638-940c-11e8-bb6e-5b2933e6631d.html.

concealment, omission, misrepresentation, or nondisclosure of material facts related to SCE&G's decision to abandon the nuclear project. These considerations, in turn, directly determine how much SCE&G customers must pay for this debacle over the coming decades.

11. It is critical that the Commission conduct a thorough review of the V.C. Summer Units 2 & 3 project before issuing its abandonment decision, not only to determine what SCE&G customers should have to pay for SCE&G's $9 billion failure, but to help prevent future energy planning disasters. Regulators need to understand exactly what went wrong to protect ratepayers moving forward.

12. Second, after the Commission hears evidence on abandonment, the parties can turn to the first merger and acquisition of the largest retail electric utility in South Carolina. Evaluation of the merger demands focused attention from parties and the Commission. As this Commission noted in January, "the last merger considered by this Commission"—which did not involve any abandonment determination—"took almost a year and a half to be completed." Commission Order No. 2018-80.

13. For the sake of judicial economy, the best way to separate the issues presented by the consolidated dockets is to bifurcate them into two distinct dockets so that the Commission can receive testimony, hold a hearing, and issue an order regarding the prudency of abandonment and resulting ratepayer financial burden for the V.C. Summer Units 2 & 3 project first, then—if necessary—receive testimony, hold a hearing, and issue an order regarding the proposed business combination and associated customer benefits plan or alternative cost recovery proposals. The ratepayer relief in the Application presumes the Commission will approve the costs in Exhibit 13. It is entirely

possible that the Commission will find Exhibit 13 unpersuasive. In fact, it is possible that the Commission's order on abandonment will provide greater ratepayer relief than any of Dominion and SCE&G's proposals.

14. Dominion has in fact signaled that it may withdraw its business combination proposal if SCE&G is unable to recover its costs for the V.C. Summer project. By issuing an order on abandonment first, Dominion and SCE&G will have the opportunity to revise or withdraw their business combination application, before parties spend resources litigating the merger proposal.

15. Bifurcation would also enable the Commission to properly value SCE&G's assets before a merger proceeds. This would help the Commission and parties better evaluate whether the proposed merger and cost benefits plan is in ratepayers' best interest.[4] Without some understanding of how much SCE&G can recover for the V.C. Summer Units 2 & 3 project, it is not clear what the Company is worth, and it is not possible to evaluate whether the merger proposal and associated customer benefits plan is appropriate.

16. 2018 South Carolina Laws Joint Resolution Ratification No. 285 (S. 0954), which became law on July 2, 2018, requires only that "[t]he Public Service Commission shall not hold a hearing on the merits before November 1, 2018, for a docket in which requests were ***made pursuant to the Base Load Review Act*** . . . [and that t]he Public Service Commission must issue a final order on the merits for a docket in which requests were ***made pursuant to the Base Load Review Act*** no later than December 21,

[4] SCE&G and Dominion seek formal approval of the merger under S.C. Code Ann. § 58-27-1300, a finding that the merger is in the public interest, or a finding of an absence of harm to South Carolina ratepayers as a result of the merger. Application at 2.

2018." Ratification No. 285 § 1. The Resolution therefore permits the Commission to bifurcate the consolidated dockets into two distinct dockets and to delay its decision on the non-Base Load Review Act issues—*i.e.*, the requests for approval of the merger and benefits plans. Given the extremely compressed timeframe required by the General Assembly, bifurcation of the proceeding will allow for a more orderly, thoughtful, and deliberate process in resolving the important questions surrounding the V.C. Summer abandonment.

17. SCE&G and Dominion sought approval of the rate credit and bill reduction elements of the three alternative cost recovery options under S.C. Code Ann. § 58-27-870(F), which allows the Commission to approve a rate schedule without notice and hearing. In denying SCE&G's motion to expedite its Application in Order No. 2018-80,[5] the Commission noted that S.C. Code Ann. § 58-27-870(F) begins with the language "Notwithstanding the provisions of Sections 58-27-860 and 58-27-870 . . ." and interpreted that language to mean that the six-month deadline for the Commission to issue an order approving or disapproving proposed rate changes found in Section 58-27-870(B) is not applicable. In other words, the General Assembly's 2018 legislation permits the Commission to issue an order on the merger after December 21, 2018.

18. In light of Joint Resolution Ratification No. 285, CCL and SACE request that the Commission procedural schedule set in Hearing Officer Order No. 2018-81-H apply to the first of two bifurcated dockets to decide the prudence of abandonment and other nuclear rates issues. CCL and SACE further request that a procedural schedule be

[5] SCE&G and Dominion filed a Petition for Review, Reconsideration, and Rehearing of Order No. 2018-80 on February 7, 2018, but later withdrew the Petition after S. 0954 was amended to set a deadline for a final order in dockets concerning requests made pursuant to the Base Load Review Act.

set for consideration of the proposed merger and benefits plans, with an order to be issued after December 21, 2018.

19. In the alternative, CCL and SACE move the Commission to sequence the hearing set in Hearing Officer Order No. 2018-81-H so that witnesses must present their testimony and submit to cross-examination and Commissioner questioning on the prudency of abandonment of the V.C. Summer Units 2 & 3 project first, then witnesses that will address the business combination and the Application's proposed cost recovery proposals must present their testimony and submit to cross-examination and Commissioner questioning. The record on abandonment would be closed before the parties and Commission turn to the business combination and the Application's proposed cost recovery proposals, resulting in two separate transcripts. Sequencing would allow parties to clearly outline what they think SCE&G should recover for the project, if anything, so that the Commission can understand the range of options before turning to the merger and benefits plan. This would help the Commission make the independent determinations required by the Joint Application. Separating the record would help parties seeking to appeal certain aspects of the final Commission order.

WHEREFORE, having fully set forth its motion, CCL and SACE move the Commission to issue an order bifurcating the proceeding for consolidated dockets 2017-207-E, 2017-305-E, and 2017-370-E or, in the alternative, an order sequencing the hearing of the consolidated dockets.

Respectfully submitted this 31st day of July, 2018.

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